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No. _____

Supreme Court, U.S.
FILED
OCT 10 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

October Term, 1987

In re Edward J. Arlt and wife, Carol A. Arlt;
Petitioners,

---

on a Petition for a Common Law
Writ of Prohibition

APPENDIX TO THE PETITION FOR A COMMON LAW WRIT OF PROHIBITION

Edward J. Arlt
67th Judicial District of Texas
5th Judicial Circuit of the Union
1501 Tyler Street
Arlington, Texas
Petitioner - In Propria Persona,
Sui Juris

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APPENDIX A

Order of the District Court denying the Defendants' Motion to Quash the Complaint for lack of jurisdiction over the persons of the Accused", August 26th, 1986.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

UNITED STATES OF AMERICA	)	
	)	
VS.	)	CIVIL ACTION NO.
	)	4-85-118-K
EDWARD J. ARLT, ET AL.	)	

ORDER

On this day came on to be considered the Motion of Edward J. Arlt, filed on his behalf and on behalf of his wife and co-defendant, Carol A. Arlt, to Quash the Complaint for Lack of Jurisdiction of the Persons of the Accused(sic). Having considered such motion and all submissions in support thereof, as well as all pleadings and motions of Plaintiff and Defendants on file herein, the Court is of the opinion that such Motion should be denied. Defendant Arlt asserts that there are two classes of United States citizens original de jure citizenship through the

organic common law and the original Constitution of the United States, and de facto citizenship created by the Fourteenth Amendment. Defendant Arlt further asserts that these two classes of citizenship have different rights and privileges, with the former being the higher class of citizenship, to which he and Mrs. Arlt as "free, white and Christian", belong. By virtue of such status, Mr. Arlt contends, he and Mrs. Arlt are not subject to the jurisdiction of this Court. The Court finds such contentions to be unsupported by law and without merit. Mr. and Mrs. Arlt, by their presence within the territorial jurisdiction of this Court are personally subject to such jurisdiction, if properly served with process according to Rule 4, Federal Rules of Civil Procedure. The Court finds that Mr. and Mrs. Arlt have been properly served and are properly before the Court, which has in personam jurisdiction.

The Court also finds that it has subject matter jurisdiction of this cause of action pursuant to Article III, Section 2, clause 1 of the Constitution of the United States, and SS1340 and 1345 of Title 28, U.S.C. Mr. Arlt contends that he and Mrs. Arlt re not subject to the Internal Revenue Code, Title 26, U.S.C. Nonetheless, such claim goes to the merits, and does not defeat jurisdiction of this Court, which as jurisdiction to determine the validity of such claim.

The Court notes here that Defendant Arlt has made several requests for an "evidentiary hearing" on this matter of citizenship, jurisdiction and the applicability of Title 26, U.S.C. to the Arlts. Upon a review of the applicable pleadings, motions and authority, the Court is of the opinion that such matters are in the nature of affirmative defenses to Plaintiff's claim for relief, and would be

more properly presented in the trial of this matter than in a pre-trial hearing.

It is therefore ORDERED that Defendant Arlt's Motion to Quash the Complaint for Lack of Jurisdiction over the Persons of the Accused(sic) is hereby DENIED.

IT IS SO ORDERED.

SIGNED this 26 day of August, 1986.

/s/ David O. Belew Jr.
DAVID O. BELEW, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX B

Order and Memorandum Opinion of the District Court imposing Summary Judgment, October 9th, 1986.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

UNITED STATES OF AMERICA	)	
	)	
VS.	)	CIVIL ACTION NO.
	)	4-85-118-K
EDWARD J. ARLT, ET AL.	)	

SUMMARY JUDGMENT

For the reasons stated in the accompanying Memorandum Opinion of even date, summary judgment is GRANTED in favor Plaintiff United States of America.

IT IS SO ORDERED.

SIGNED this __9__ day of October, 1986.

/s/ David O. Belew Jr.
DAVID O. BELEW, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

UNITED STATES OF AMERICA	)	
	)	
VS.	)	CIVIL ACTION NO.
	)	4-85-118-K
EDWARD J. ARLT, ET AL.	)	

MEMORANDUM OPINION

This matter is before the Court on Plaintiff's Motion for Summary Judgment.

Plaintiff seeks to reduce to judgment certain federal tax liabilities, to set aside as a fraudulent conveyance a transfer of real property by Defendants Arlt and foreclose federal tax liens against the property, and to obtain a deficiency judgment. Plaintiff basis its Motion for Summary Judgment and its assertion that no genuine issue of material fact exist on the failure of Defendant Carol Arlt to file responses to a request for admissions by Plaintiff and the assertion by Defendant

Edward Arlt of blanket objections to the request admissions. In addition, both Defendants Arlt made objections to a set of written interrogatories Plaintiff served upon each of them.

In response to Plaintiff's Motion for Summary Judgment, Defendant Arlt "speaking for and representing himself, his wife, (and) the (Defendant) Christian Research Trust" makes several contentions. First, Defendant Arlt claims a lack of in personam jurisdiction by this Court. This contention was addressed and overruled in the Court's Order of August 26, 1986 denying the Motion of Defendants Arlt to Quash the Complaint for Lack of Jurisdiction Over the Persons of the Accused (sic). Additionally, the questions raised by Defendants Arlt with regard to in personam jurisdiction have been decided by the courts and precedent does not support Defendants' position. Defendants' second

contention, that the Internal Revenue Service is without authority in this matter, has likewise been settled adversely to Defendants' position.

Defendants Arlt also contend that Plaintiff's requests for admissions are moot as Defendants filed an answer admitting or denying the matters raised by Plaintiff's Complaint. This is not a valid contention. Requests for admissions pursuant to Rule 36, Federal Rules of Civil Procedure, are a discovery tool separate and apart from a defendant's responsive pleading and each serves a different purpose. Defendants cannot justify their failure to properly respond to Plaintiff's requests for admissions by stating that they have filed an answer.

The remaining two two objections to the motion for summary judgment - that timely objections were filed to the interrogatories and requests for admissions and that

Defendants Arlt could not be compelled to make an oath - were addressed by the Court in the memorandum opinion entered on August 29, 1986. Defendants' objections were overruled, and pursuant to Rule 46(d), Federal Rules of Civil Procedure, the Court held that Defendants Arlt could make answers to the interrogatories under solemn affirmation in lieu of an oath. The Court ordered Defendants Arlt to file and serve upon Plaintiff full complete, and non-evasive responses and answers to Plaintiffs interrogatories and requests for admissions, and stated that if Defendants Arlt failed to comply with the order the matters inquired about in Plaintiff's interrogatories and requests for admissions would be taken as established in accordance with Plaintiff's claims for the purposes of this action in accordance with Rule 37(b)(2).

In response to the Order of August 29,

1986, Defendants Arlt filed and served "full, complete, and non-evasive responses" to Plaintiff's interrogatories and requests for admissions. Each response consists of the statement "I would object to the question (or request) and decline to answer based on the 1st and 4th amendment limitations upon the United States of America stated in the Bill of Rights." These objections were overruled in the order entered on August 29, 1986. Accordingly, pursuant to such Order and Rule 37(b)(2), the Court hereby determines that the facts inquired about in Plaintiff's interrogatories and requests for admissions are hereby found to be established in accordance with Plaintiff's claims for the purposes of this action, and this matter is ripe for summary judgment, as no genuine issue of material fact exists.

The question raised by Plaintiff

concerning fraudulent transfer is now moot. In a pleading entitled "Exceptions to the Order and Memorandum Opinion of the Court Compelling Further Answers to the Interrogatories and Requests for Admissions", filed on September 8, 1986, Defendant Edward J. Arlt stated that "(n)o trusts actually exist by law and the true owner of those various chattels and property currently recorded under the names of (the New Jerusalem Trust and the Christian Research Trust) is, in fact and law Edward J. Arlt." Accordingly, the Court finds that the transfers of title to the subject property were void and title to the subject property is vested in Defendants Arlt and that federal tax liens in the amount of $3,639.14 have attached to their interests. A summary judgment in favor of Plaintiff will be entered.

SIGNED this 9 day of October, 1986.

/s/ David O. Belew Jr.
DAVID O. BELEW, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX C

Final Judgment of the District Court, December 16th, 1986.

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	CIVIL NO.
	)	CA4-85-118-K
EDWARD J. ARLT,	)	
CAROL A. ARLT, AND FIRST	)	
FIDELITY MORTGAGE COMPANY,	)	
	)	
Defendants	)	
	)	
v.	)	
	)	
EDWARD J. ARLT and	)	
JACK ROACH, Trustees	)	
of the New Jerusalem	)	
Trust and Jack Roach,	)	
Ben Mudd, and Morgan	)	
Millican, Trustees of the	)	
Christian Research Trust,	)	
	)	
Defendants of Nominee	)	

FINAL JUDGMENT

In accordance with the Memorandum Opinion issued on October 9, 1986,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. The plaintiff, United States of America, does hereby have and recover judgment against the defendants, Edward J.

Arlt and Carol A. Arlt, for the sum of $8,182.91 plus statutory interest and penalties from December 31, 1986 and plus interest according to law from date of judgment.

2. The tax liens of the United States are foreclosed against the property described as:

> All that tract or parcel of land lying and being in Lot 6 in Block 2, WEST HILLS ADDITION, an addition to the City of Arlington, Tarrant County, Texas, according to Plat recorded in Book 388-P, Page 1, Plat Records, Tarrant County, Texas and being commonly known as: 1501 Tyler Street, Arlington, Texas 76012.

3. The United States is entitled to seize and sell the property described above at public auction, in accordance with Title 28 S U.S. Code, Sections 2001 and 2002.

4. The United States is entitled to a deficiency judgment for any unsatisfied amount of tax liability.

Dated this 16 day of December, 1986.

/s/ David O. Belew Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX D

The District Court's Order of Seizure and Sale, January 26th, 1987.

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	CIVIL NO.
	)	CA4-85-118-K
EDWARD J. ARLT,	)	
CAROL A. ARLT, AND FIRST	)	
FIDELITY MORTGAGE COMPANY,	)	
	)	
Defendants	)	
	)	
v.	)	
	)	
EDWARD J. ARLT and	)	
JACK ROACH, Trustees	)	
of the New Jerusalem	)	
Trust and Jack Roach,	)	
Ben Mudd, and Morgan	)	
Millican, Trustees of the	)	
Christian Research Trust,	)	
	)	
Defendants of Nominee	)	

ORDER OF SEIZURE AND SALE

WHEREAS, the United States of America, as plaintiff, on the 16th day of December, 1986, in the United States District Court for the Northern District of Texas, Ft. Worth Division, in Cause Number CA 4-85-

118-K in said Court, recovered a judgment as follows:

1. The plaintiff, United States of America, does have judgment in its favor foreclosing its federal tax liens as to all of the interest and claims of defendants, Edward J. Arlt and Carol A. Arlt.

2. The tax liens of the United States are foreclosed against the property described as follows:

> All that tract and parcel of land lying and being in Lot 6 in Block 2, WEST HILLS ADDITION, an addition to the City of Arlington, Tarrant County, Texas, according to Plat recorded in Book 388-P, Page 1, Plat Records, Tarrant County, Texas and being commonly known as: 1501 Tyler Street, Arlington Texas 76012.

3. The United States is entitled to a deficiency judgment for any unsatisfied amount of their tax liabilities.

It is therefore,

ORDERED that the United States Marshal, Northern District of Texas, is hereby commanded to seize and sell the property

described above at public auction, in accordance with Title 28 U.S. Code, Sections 2001 and 2002.

(a) Notice shall be published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation Tarrant County, Texas. Said notice shall describe the property as set out above in paragraph 2 and shall contain the terms and conditions of sale as set out herein. Further, a copy of said notice of sale shall be mailed by certified mail and return receipt requested, to the last known address of the defendants as follows:

Edward J. Arlt
1501 Tyler Street
Arlington, Texas 76012

Carol A. Arlt
1501 Tyler Street
Arlington, Texas 76012

(b) The terms and conditions of sale shall be as follows:

(1) The property shall be sold as a

whole at public sale at the door of the Courthouse for Tarrant County, Ft. Worth, Texas.

(2) The United States may bid a credit against its judgment and interest thereon, costs and expenses without tender of cash, as provided by 31 U.S.C., Section 195.

(3) The terms of sale as to all other persons or parties bidding shall be cash as follows:

> The successful bidder, called purchaser herein, shall be required to deposit with the United States Marshal, cash equal to 20 percent of his total bid immediately upon the property being struck off and awarded to him as the highest and best bidder; and the remaining 80 percent of said purchase price to be paid on or before 5 p.m., ten days, inclusive, of the date of sale. Should any person bid off property at sale by virtue of this

judgment and Order of Sale, and fail to comply with the terms of the sale, he shall be liable to the plaintiff for 20 percent of the value of the property thus bid off as a penalty, besides costs, to be recovered in motion, five days notice of such motion being given to such purchaser and said deposit by purchaser shall be paid over and delivered to plaintiff to be applied toward payment of said penalty, but payment of said penalty by purchaser shall not be a credit on the judgment of plaintiff against the defendants, and should the property on second sale bring less than on the former, the defaulting purchaser at first sale shall be liable to pay the defendants at judicial sale all loss which they sustain, including the amount of the difference between the bid at the first sale and the bid

under which the property finally sold, to be recovered on motion;

(c) The United States Marshal shall make his report of sale within 10 days from the date of sale.

(d) If no objections have been filed in writing in this cause with the Clerk of this Court, by 10 a.m., 15 days inclusive, from date of sale, the sale shall be confirmed immediately thereafter without the necessity of motion, or upon motion of the plaintiff, the purchaser, or by the Court upon its own motion, and the United States Marshal shall be directed to deliver his deed to said purchaser.

(e) The United States Marshall shall apply the proceeds of sale first to expenses of sale, including the Marshal's commission, hen to the mortgage lien of First Fidelity Mortgage Co., then to plaintiff's court costs in this suit and then to satisfaction of the liens of the

United States of America in the amount of $8,182.91. If the property should sell for more than sufficient to pay off and satisfy said sums of money and liens then the United States Marshal shall pay over the excess to defendants, Edward J. and Carol A. Arlt. If the proceeds of such sale are insufficient to pay off and satisfy the judgment and the liens of the United States of America, interest thereon, and all costs, then the United States Marshal executing the Order of Sale shall take the money, or any balance thereof remaining unpaid, out of any other property of the defendants, Edward J. and Carol A. Arlt, as in the case of ordinary execution.

SIGNED this 26 day of January, 1987.

/s/ David O. Belew Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX E

Judgment of the 5th Circuit Court of Appeals dismissing the Appeal for lack of jurisdiction, June 16th, 1987.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 86-1865
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDWARD J. ARLT, and
CAROL A. ARLT,

Defendants-Appellants.

- - - - - - - - - - - - - - - -

Appeal from the United States District Court
for the Northern District of Texas

- - - - - - - - - - - - - - - -

(June 16, 1987)

Before RANDALL, WILLIAMS, AND GARWOOD,

Circuit Judges.

PERCURIAM:*

The appellants' motion for this appeal to be heard and decided by a panel composed

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

The appellants' motion for this appeal to be heard and decided by a panel composed only of "free white Christian males" is DENIED as frivolous.

The district court granted summary judgment in this civil action in an order entered October 10, 1986. In a separate document, a "Memorandum Opinion," the district court stated its reasons for granting summary judgment. The defendants moved for additional findings of fact and conclusions of law in a pleading served October 19, 1986, and filed the next day. See Fed. R. Civ. P. 52(b). Before the district court addressed the Rule 52(b) motion, the defendants filed a notice of appeal on December 3, 1987. On December 16, 1987, the district court entered final judgment.

The district court has not ruled on the Rule 52(b) motion.

The timely motion under Rule 52(b) for

additional findings and conclusions nullifies the notice of appeal filed before the motion is decided. Fed. R. App. P. 4(a)(4); Van Wyk El Paso Investment, Inc. v. Dollar Rent-A-car Systems, Inc., 719 F.2d 806, 807 (5th Cir. 1983). The appeal is DISMISSED. A new notice of appeal may be filed within the time prescribed by Fed. R. App. P. 4(a)(1) after the district court rules on the Rule 52(b) motion; an additional filing fee will not be required. See Fed. R. App. P. 4(a)(4).

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 86-1865
Summary Calendar

D.C. Docket No. CA-4-85-118-K

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDWARD J. ARLT, and
CAROL A. ARLT,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Texas

Before RANDALL, WILLIAMS, AND GARWOOD, Circuit Judges.

JUDGEMENT

This cause came on to the beard (sic) on the record on appeal and was taken under submission of the briefs on file.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the appeal in this cause is dismissed for want of jurisdiction. IT IS FURTHER ORDERED

that if a new notice of appeal is filed within the time prescribed by Fed. R. App. P. 4(a)(1) after the district court rules on the Rule 52(b) motion no additional filing fee will be required.

IT IS FURTHER ORDERED that defendants-appellants pay to plaintiff-appellee the costs on appeal, to be taxed by the Clerk of this court.

June 16, 1987

ISSUED AS MANDATE: JUL 8 1987

OP-JDG-11

APPENDIX F

Order of the District Court denying the "Motion for Findings of Fact and Conclusions of Law", August 10th, 1987.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

UNITED STATES OF AMERICA	)	
	)	
VS.	)	CIVIL ACTION NO.
	)	4-85-118-K
EDWARD J. ARLT, ET AL.	)	

ORDER

This Court granted summary judgment in the above-referenced action in an Order entered on October 10, 1986. In a separate document, a "Memorandum Opinion", the Court stated its reasons for granting summary judgment. The Defendants filed a motion for additional findings of fact and conclusions of law in a pleading served on October 19, 1986, and filed the next day. See Federal Rules of Civil Procedure 52(b). After careful review, the Court finds that said motion is not well-taken and is hereby DENIED.

IT IS SO ORDERED.

SIGNED this 10 day of August, 1987.

/s/ David O. Belew Jr.
DAVID O. BELEW, JR.
UNITED STATES DISTRICT JUDGE